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96-4555 SC

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WILLIAM T. WALSH
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IN THE UNITED SATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, Plaintiff, v. COMPACTION SYSTEMS CORPORATION, COMPACTION SYSTEMS CORPORATION OF CONNECTICUT, CONNECTICUT RESOURCE RECOVERY AUTHORITY, INC., OCCIDENTAL PETROLEUM CORPORATION, RAYONIER, INC., KNOLL PHARMACEUTICAL COMPANY, INC., J. FILIBERTO SANITATION, INC., MORRIS COUNTY LANDFILL, INC., and BROWNING-FERRIS INDUSTRIES OF NORTH JERSEY, INC., Defendants.	CIVIL ACTION NO. 96-5349(ASL)

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

This is a civil action for the recovery of costs

and declaratory relief against the above-named defendants under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607. The United States seeks to recover costs that it has incurred in connection with the release or threatened release of hazardous substances into the environment at or from a facility located in Mount Olive Township, Morris County, New Jersey, known as the Combe Fill North Landfill Superfund Site (the "Site").

JURISDICTION AND VENUE

This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607(a) and 9613(b).

Venue is proper in this district pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), as the actual or threatened release of hazardous substances that give rise to the this claim occurred in this judicial district.

DEFENDANTS

The defendant, Compaction Systems Corporation (a/k/a Compaction Systems Corporation of New Jersey) ("Compaction"), is incorporated in New York. On information and belief, Compaction operated the Site at the time hazardous substances were disposed there, and accepted hazardous substances for transport for disposal, and selected the Site as the ultimate location of such substances.

The defendant, Compaction Systems Corporation of Connecticut ("Compaction-Connecticut"), is incorporated in

Connecticut. On information and belief, Compaction-Connecticut accepted hazardous substances for transport for disposal, and selected the Site as the ultimate location of such substances.

The defendant, Connecticut Resource Recovery Authority, Inc. ("CRRA"), is incorporated in Connecticut. On information and belief, CRRA arranged for the disposal of hazardous substances at the Site, and accepted hazardous substances for transport for disposal, selecting the Site as the ultimate location of such substances.

The defendant, Occidental Petroleum Corporation ("Occidental"), was incorporated in Delaware in or about 1986. Prior to its incorporation in Delaware, Occidental was incorporated in California under the same name and address, and as such, Occidental retained the liabilities of the California corporation of the same name. On information and belief, at all relevant times hereto, Occidental Resource Recovery Systems, Inc. ("ORRSI") was a wholly-owned subsidiary of Occidental. Occidental, ORRSI, and/or others were partners in a joint venture, CEA-OXY Resource Recovery Associates ("CEA-OXY"), which collected, generated, and transported waste containing hazardous substances to the Site. Furthermore, on information and belief, Occidental was the successor to CEA-OXY, such that Occidental is responsible for the liabilities of CEA-OXY. Based on the above, Occidental arranged for hazardous substances to be disposed at the Site, and accepted hazardous substances for transport for disposal, selecting the Site as the ultimate location of such substances.

The defendant, Rayonier, Inc. (f/k/a ITT Rayonier, Inc.) is incorporated in Delaware. ITT Rayonier, Inc. changed its name to Rayonier, Inc. in or about 1994, and therefore, Rayonier has succeeded to the liabilities of ITT Rayonier, Inc., with respect to this action. On information and belief, Rayonier arranged for hazardous substances to be disposed at the Site.

The defendant, Knoll Pharmaceutical Company, Inc. (f/k/a Knoll Pharmaceutical Company and BASF K & F Corporation) ("Knoll"), is incorporated in Delaware. Knoll Pharmaceutical Company changed its name to BASF K & F Corporation in or about 1986, and BASF K & F Corporation subsequently changed its name to Knoll Pharmaceutical Company, Inc. Therefore, Knoll has succeeded to the liabilities of Knoll Pharmaceutical Company and BASF K & F Corporation with respect to this action. On information and belief, Knoll arranged for hazardous substances to be disposed at the Site.

The defendant, J. Filiberto Sanitation, Inc. ("Filiberto"), is incorporated in New Jersey. On information and belief, Filiberto accepted hazardous substances for transport for disposal, selecting the Site as the ultimate location of such substances.

The defendant, Morris County Landfill, Inc. ("Morris County Landfill"), is incorporated in New Jersey. Morris County Landfill Company changed its name to Morris County Landfill, Inc. sometime in the 1970s, and therefore, Morris County Landfill, Inc., has succeeded to the liabilities of Morris County Landfill Company with respect to this action. Morris

County Landfill owned and/or operated the Site at the time hazardous substances were disposed there.

The defendant, Browning-Ferris Industries of North Jersey, Inc. ("Browning-Ferris"), is incorporated in New Jersey. On information and belief, Browning-Ferris accepted hazardous substances for transport for disposal, selecting the Site as the ultimate location of such substances.

SITE DESCRIPTION AND FACTUAL BACKGROUND

The Site occupies approximately 100 acres, about 65 acres of which was used as a landfill between 1966 and 1981. The Site is within two miles of the residential community of Netcong Boro, and thousands of people use ground water from private wells located downgradient of the Site.

In the early 1980s, EPA began to investigate the Site for possible environmental problems due to citizen complaints and local and state government enforcement activities.

As a result of investigations demonstrating that hazardous substances had been disposed at the Site, in September 1983 the Site was placed on the National Priorities List ("NPL"), 40 C.F.R. Part 300, Appendix B, pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a). Sites on the NPL are those that EPA has determined present the greatest danger to public health, welfare, or the environment, and are eligible for long-term remedial action financed using funds from the Hazardous Substance Superfund, commonly referred to as the "Superfund", 42 U.S.C. § 9611.

Under a cooperative agreement with EPA, a remedial

investigation and feasibility study was thereafter conducted by the New Jersey Department of Environmental Protection ("NJDEP"), which documented the presence of hazardous substances at and near the Site, including but not limited to, lead, mercury, phenols, phthalates, cyanides, hexachlorobenzene, ethylbenzene, toluene, and methylene chloride.

The substances referred in paragraph 16 are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

There was a "release" or "threatened release" of a hazardous substance at or from the Site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

On September 29, 1986, the Regional Administrator of EPA Region II signed a Record of Decision ("ROD") through which EPA selected a remedial action to address the release or threatened release of hazardous substances at or from the Site. The ROD outlined the remedy to be conducted at the Site, including the installation of a cap over the landfill, construction of a drainage system to control run-off, installation of a vent system to control underground methane gas, fencing of the Site, and monitoring of the remedy.

The remedy has now been constructed and monitoring is on-going.

The actions taken by the United States and NJDEP in connection with the Site constitute "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

As a result of such response actions, the United

States has incurred approximately $17 million in unreimbursed costs.

CLAIM FOR RELIEF

Paragraphs 1 through 22 are realleged and incorporated herein by reference.

Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

> (2) any person who at the time of disposal of any hazardous substances owned or operated any facility at which such hazardous substances were disposed of,
>
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at a facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
>
> (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such persons, from which there is a release, or a threatened release which caused the incurrence of response costs, of a hazardous substance, shall be liable for --
>
> (A) all costs of removal or remedial action incurred by United States Government or a State . . . not inconsistent with the national contingency plan; . . .

Each of the above-named defendants is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

The defendants are within the classes of persons described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

The response costs incurred by the United States in connection with the Site were not inconsistent with the National Contingency Plan ("NCP"), which was promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and is codified at 40 C.F.R. Part 300, et seq.

Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the defendants are jointly and severally liable to the United States for all costs incurred and to be incurred by the United States in connection with the Site, including prejudgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, respectfully prays that this Court:

1. Enter judgment against each of the defendants, jointly and severally, for all past response costs incurred by the United States in connection with the Site, together with interest thereon; and

2. Award such other relief as this Court deems just and proper.

Respectfully submitted,

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January 23, 1997

FACSIMILE COVER SHEET

TO: Bill Tucker **FAX NO.:** (212) 637-3096

FROM: Brian Donohue

RE: Combe Fill Complaint

 # OF PAGES (w/ COVER): 9

MESSAGE: Bill: As you requested. Let me know if you need an unfaxed copy. In looking through my files, I don't see that I ever sent you a date-stamped copy of the complaint. My apologies.

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IF THERE ARE PROBLEMS WITH THIS TRANSMISSION, PLEASE CALL BRIAN DONOHUE (202) 514-5413.